

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 13 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RYLAND D. SCHUSTER,

Petitioner - Appellant,

v.

RANDY BLADES, Warden,

Respondent - Appellee.

No. 08-35944

D.C. No. 1:05-cv-00154-EJL

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
Edward J. Lodge, District Judge, Presiding

Argued and Submitted November 5, 2009
Portland, Oregon

Before: KOZINSKI, Chief Judge, FISHER and PAEZ, Circuit Judges.

Schuster failed to properly exhaust his claims before the Idaho state courts. *See Lindquist v. Gardner*, 770 F.2d 876, 877 (9th Cir. 1985) (holding that to exhaust claims, “[a] petitioner must present his claim to the state courts on direct appeal, or through collateral proceedings”). Thus, his claims are procedurally

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

defaulted. *See* Idaho Code Ann. § 19-4902 (establishing a one year statute of limitations on post-conviction actions brought under the Idaho Uniform Post-Conviction Procedure Act). Nor has Schuster presented sufficient evidence that either his attorney or the Idaho Supreme Court caused his default. Accordingly, the procedural defaults are not excused, and the district court did not err in dismissing Schuster's claims with prejudice.

AFFIRMED.